

ISSUED: September 20, 2002

D.T.E. 02-13-F

Investigation by the Department of Telecommunications and Energy on its own motion, pursuant to G.L. c. 159, §§ 12, 32, and 39 and G.L. c. 166, §§ 11 and 12, regarding the failure by several individually named common carriers of telecommunications services to file their annual returns for the year 2000 by March 31, 2001 and to pay statutory forfeitures.

In the Matter of

Ecocom USA Limited
International Thinklink Corp. d/b/a ITC

D.T.E. 02-13-9
D.T.E. 02-13-15

I. INTRODUCTION

The Department requires all common carriers that are engaged in the “transmission of intelligence within the commonwealth,” i.e. telecommunications services, to be registered by having an approved tariff on file with the Department as well as a current statement of business operations. Regulatory Treatment of Telecommunications Common Carriers Within the Commonwealth of Massachusetts, D.P.U. 93-98 (1994), at 12; see also G.L. c. 159, § 12. All common carriers of telecommunications services within the Commonwealth also must file with the Department annual returns for the year ended December 31, by March 31 of the following year, in a format prescribed by the Department. G.L. c. 159, §§ 12, 32; G.L. c. 166, § 11. Therefore, the deadline for filing annual returns for the year 2000 was March 31, 2001, absent any extensions that the Department may grant for good cause. G.L. c. 159, § 32; G.L. c. 166, § 11.

Any telephone company that neglects to file the required annual return forfeits to the Commonwealth five dollars per day for the first fifteen days that the neglect continues, ten dollars per day for the next fifteen days, and fifteen dollars per day for each day thereafter. G.L. c. 166, § 12. Further, if the Department determines that a telephone company “unreasonably refuses or neglects to make such return,” the company shall forfeit up to \$500 in addition. Id. If, in the judgment of the Department, a common carrier neglects to make returns as required by law, the Department is obligated to present the facts to the Attorney General for action. G.L. c. 159, § 39.

A significant number of telephone companies failed to file annual returns on a timely basis and pay statutory forfeitures to the Commonwealth for the year 2000. Therefore, on April 8, 2002, the Department opened separate investigations into the failure by each of these companies to file annual returns or to pay the statutory forfeiture. Although this Order pertains to two proceedings with similar facts, the dockets are not consolidated; thus, the findings of fact issued today are applicable to each company, individually.

II. PROCEDURAL HISTORY

The Department opened investigations regarding the following companies: Ecocom USA Limited (“Ecocom”), docketed as D.T.E. 02-13-9; and International Thinklink Corp. d/b/a ITC (“International Thinklink”), docketed as D.T.E. 02-13-15. Pursuant to notice duly issued, the Department conducted public hearings and evidentiary hearings in each of these proceedings on April 25, 2002. No party entered an appearance or filed comments. The evidentiary record in each proceeding contains five exhibits.¹ After the record was closed, the hearing notices, which were sent to the last known addresses of these companies as indicated on their filed statements of business operations and tariff pages, were returned to the Department as undeliverable with no available forwarding address.

The Department takes administrative notice, pursuant to 220 C.M.R. § 1.10(2), of a document filed with the Secretary of the Commonwealth of Massachusetts, indicating that the resident agent for Ecocom resigned on June 6, 2002 (Certificate of Resignation of Resident

¹ Because the exhibits in each proceeding are essentially identical in nature, all references to exhibits in this Order will omit the docket number and simply refer to the corresponding exhibit number; e.g. Exhibit 1.

Agent, June 6, 2002). The Department also takes administrative notice that the Secretary of the Commonwealth's corporations database has no record of any corporation having registered as "International Thinklink" and no record of any California corporation registered as "ITC," as indicated in International Thinklink's statement of business operations and tariff pages filed with the Department.²

III. ANALYSIS & FINDINGS

A. Ecocom

Ecocom was a registered common carrier of telecommunications services during the year 2000, because it had an approved tariff and statement of business operations on file with the Department. Therefore, Ecocom was obligated to file its annual return for the year 2000 by March 31, 2001. G.L. c. 159, § 32; G.L. c. 166, § 11. Prior to commencing these investigations, the Department had allowed Ecocom an extension to file its annual return without incurring the statutory forfeiture, but only if the company did so by July 28, 2001 (Exh. 3). To date, Ecocom has not filed its annual return for the year 2000. The Department did not allow any further extensions. Accordingly, the Department finds that Ecocom neglected to file its annual return by March 31, 2001, and that the daily statutory forfeiture to

² International Thinklink indicates in its statement of business operations filed with the Department that it is incorporated under the laws of the State of California, doing business as ITC. Foreign corporations doing business within the Commonwealth of Massachusetts are required to file a foreign corporation certificate with the Secretary of the Commonwealth. G.L. c. 181, § 4.

the Commonwealth of Massachusetts pursuant to G.L. c. 166, § 12 applies calculated from that date up to June 6, 2002.³

Every telephone company that files a tariff and a statement of business operations with the Department makes a representation that it has the managerial, technical, operational, and financial ability to comply with statutory requirements and the Department's tariff review process, and the Department deems a registered company capable unless it specifically finds otherwise. See D.P.U. 93-98, at 12. Ecocom provided no excuse for its continuing failure to file its year 2000 annual return more than one year after the deadline. Moreover, Ecocom ignored or failed to respond to three separate notices from the Department's Telecommunications Division reminding the company that it had failed to file its annual return (Exhs. 3 - 5). Although the Department is not required to provide reminders to companies that have represented to the Department that they have the ability to comply with the Commonwealth's statutory requirements, Ecocom's failure to respond compounds its neglect of its reporting obligations. Accordingly, the Department finds that the neglect by Ecocom to file its annual return is unreasonable. Therefore, the additional \$500 forfeiture is applicable. G.L. c. 166, § 12.

³ The Department concludes, however, that because Ecocom no longer has an appointed resident agent within the Commonwealth and because the hearing notice was returned as undeliverable, Ecocom is no longer doing business within the Commonwealth. Therefore, we find that the company's tariff filed with the Department is ineffective as of June 6, 2002.

B. International Thinklink

Because the Secretary of the Commonwealth has no record of International Thinklink ever having filed a foreign corporation certificate, which would have been required within ten days of the company's commencing doing business within the Commonwealth, see G.L. c. 181, § 4, it appears that International Thinklink has not engaged in the transmission of intelligence within the Commonwealth. Therefore, we find that International Thinklink was not a common carrier authorized to engage in the transmission of intelligence within the Commonwealth of Massachusetts during the year 2000, and, therefore, was not obligated to file an annual return for the year 2000.

IV. ORDER

After notice, opportunity for comment, and due consideration, it is

ORDERED that the findings reached herein are applicable to Ecocom USA Limited individually in D.T.E. 02-13-9; and it is

FURTHER ORDERED that the findings reached herein are applicable to International Thinklink Corp. d/b/a ITC individually in D.T.E. 02-13-15; and it is

FURTHER ORDERED that the findings of fact herein shall be presented to the Attorney General of the Commonwealth of Massachusetts for action pursuant to G.L. c. 159, § 39.

By Order of the Department,

/s
Paul B. Vasington, Chairman

/s
James Connelly, Commissioner

/s
W. Robert Keating, Commissioner

/s
Eugene J. Sullivan, Jr., Commissioner

/s
Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).